



Baucus testifies on litigation

■ Senate committee begins to discuss case backlog

Corporate liability for asbestos contamination should not be easily shifted to others, U.S. Sen. Max Baucus testified Tuesday morning in Washington, D.C., before the senate judicial committee examining asbestos litigation.

The judicial committee is examining the mounting backlog of asbestos litigation choking state and federal courts. It is

seeking "fair and expeditious settlements between companies and asbestos victims," said Sen. Patrick Leahy, D-Vt., committee chairman.

Baucus was one of a half dozen people to testify before the committee including trial lawyers, corporate counsels and other senators.

The asbestos litigation issue is enormous but any reform must recognize that asbestos victims should not be denied the ability to fight for their rights against the companies or individuals who injured them, the Montana senator said.

Baucus related the problems in Libby where W.R. Grace operated a vermiculite mine and mills. The vermiculite was contaminated with deadly tremolite asbestos.

"Now W.R. Grace has filed for bankruptcy, wringing its hands over escalating asbestos claims involving products it produced, and shielding billions in assets from the bankruptcy proceeding," Baucus testified. "All the while, Grace lawyers

■ Funding
received for
state screening

See Page 2

See Asbestos cases on Page 2

Western News

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Asbestos cases

Continued from Page 1
have filed for over \$30 million in fees accumulated in the past year alone defending Grace in the bankruptcy proceeding. \$30 million would go a long way in Libby, Montana, where health care costs are increasing rapidly, threatening the ability of that town to get back on its economic feet after the blow it took from W.R. Grace."

Baucus said the costs to the community and state government for health coverage is creating pressures on the state Medicaid fund and causing worker's compensation problems for private businesses, like the Stimson Lumber Mill.

Baucus also asked the committee to not cut off legal access to people not yet sick because of the latency period for asbestos-related disease.

Sen. Orrin Hatch, R-Utah, said the current legal system is requiring people not yet sick to file asbestos litigation because of existing statutes of limitations in filing such cases.

Hatch also said an "enterprising" trial bar has orchestrated mass 'asbestos screenings' to identify potential clients."

According to the recent report of the Rand Institute for Civil Justice, 600,000 people have filed claims. In addition, more than 6,000 companies have been named as defendants in asbestos litigation. RAND also notes that "about two-thirds of the claims are now filed by the unimpaired, while in the past they were filed only by the manifestly ill," Hatch said.

"Let me be clear, I do not advocate denying deserving claimants

timely and appropriate compensation," Hatch said. "But I do think that we have to make some choices here — about prioritizing who is paid now, and who is paid later. If we don't, there won't be a later, and true victims of asbestos exposure, as well as the companies' employees and pensioners, will pay the price."

The federal government conducted screenings of more than 8,000 people in the Libby area, said Baucus. People in Libby suffer from mesothelioma, an asbestos-causing cancer, at a rate of one in 1,000 when the national rate is one in one million, the senator said. Libby residents suffer from asbestos-related diseases at a rate 40-60 times the national average, he said.

"In your search for solutions to the real problems associated with asbestos litigation, Mr. Chairman, I would ask that you not make it easier for companies like W.R. Grace to shift their liability to others. In fact you should make it harder," Baucus said. "The focus here should not be on cutting off the rights of victims, but on holding accountable those who are truly responsible for the pain and suffering of real people like the people of Libby, Montana."

In 1999, during a class action asbestos case that reached the U.S. Supreme Court, Justice Ruth Bader-Ginsburg, called for Congress to address tort reform because of the growing number of asbestos-related cases.

David Austern, general counsel for the Manville Personal Injury Settlement Trust, testified Tuesday that U.S. courts have only seen between 17 and 42 percent of the

total asbestos claims that will be filed.

"Two leading actuarial firms predict that total losses due to asbestos liability in the United States will be from \$250 billion to \$275 billion, with a large portion of that total — between \$100 billion and \$175 billion — not covered by insurance," Austern said.

Frederick Baron of the law firm Baron and Budd, said the American Trial Lawyers Association believes there is no valid reason to provide legal relief to solvent defendants or their insurers.

"Any proposed legislation should not include medical standards more restrictive than those used by state courts today, otherwise many injured workers who would otherwise be entitled to benefits will be left without a remedy for the harm they have suffered," Baron said.

The economic fallout from this situation extends beyond sick victims, said Sen. Ben Nelson, D-Neb.

"Because every company that manufactured asbestos is now bankrupt, plaintiffs have been forced to seek alternative defendants to take their place," he said.

According to the Rand report, 300 firms were listed as defendants in asbestos cases in 1983. By 2002, the report estimates that more than 6,000 independent entities have been named as asbestos-liability defendants.

"Many of these new defendants are small businesses, located in every community, with little or no connection to asbestos," Nelson said.

of their background knowledge, but all that would be required would be for volunteers to be at least 18 years old, have a valid Montana driver's license and pass a basic criminal background check. People would be